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Supreme Court, U.S.
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No. 87-1420

In The

Supreme Court of the United States

October Term, 1987

M-TRON INDUSTRIES, INC.,

Petitioner,

vs.

ERNEST HILLEBRAND,

Respondent.

BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

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March, 1988

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT 1

STATEMENT OF CASE 1

ARGUMENT 1

CONCLUSION 4

TABLE OF AUTHORITIES

Page

CASES:

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986) 3

Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548 (1986) 3

Holley v. Sanyo Mfg., 771 F.2d 1161 (8th Cir. 1985) 2, 3

Legrand v. Trustees of University of Ark., 821 F.2d 478, 480 (8th Cir. 1987) (Title VII) 3

Leichihman v. Pickwick Int'l, 814 F.2d 1263, 1269 (8th Cir. 1987) (ADEA) 3

McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) 3

PRELIMINARY STATEMENT

Respondent adopts Petitioner's references to Opinions Below, Jurisdiction and Statutory Provisions Involved, and references herein to the appendix to Petitioner's Petition and Brief will be designated by parenthetical "J.A.", followed by its page number.

STATEMENT OF THE CASE

Respondent does not agree with factual representations and conclusions contained in Petitioner's Statement Of The Case.

The Court of Appeals reviewed the appeal record, including depositions and affidavits, together with appeal briefs and arguments presented by the parties. Predicated upon that record, the Court of Appeals set forth the ultimate facts upon which it relied in its August 27, 1987 Decision (J.A. 12-15). In the interests of brevity, Respondent relies upon the factual presentation contained in the referenced decision. Conflicts between factual representations made by Petitioner and by the Appeals Court are quite apparent.

ARGUMENT

Certiorari should not be granted in this case for the following reasons:

1. Petitioner has predicated its argument for Certiorari upon an unreasoneble and unjustifiable interpretation of the facts reviewed by the Appeals Court.

That Court specifically identified facts upon which it relied to determine: (1) that Respondent had established a prima facie case of age discrimination; and (2) that there was substantial evidence to support Respondent's claim that Petitioner's defense of "reduction in force" was pretextual.

2. The decision of the Court of Appeals carefully sets forth the rationale upon which the Court relied to distinguish the instant case from its previous decision in *Holley v. Sanyo Mfg.*, 771 F.2d 1161 (8th Cir. 1985). That Court observed that this case differs from *Holley* and other age discrimination cases involving reduction in force plans in that the appeal record herein disclosed substantial and significant evidence from which it could be concluded that Petitioner's defense was, in fact, pretextual. Whereas, in *Holley* and other similar cases, the defendant employer had established a well-defined reduction in force plan, and established a reason therefore. The Appeals Court neither altered the order of proof applicable to employment discrimination claims, nor did it tamper with rationale established by it and other appeals courts relating to true reduction in force cases. The contention by Petitioner that the decision of the Appeals Court "effectively eliminates the ability of a defendant employer in a discrimination action to obtain summary judgment", is neither supported by the decision itself nor by the record upon which it is predicated. To the contrary, after having recited facts which strongly support a prima facie case of age discrimination, (J.A. 14-15), the Court emphasized that the more exacting standards of *Holley* required to overcome a motion for summary judgment

were not appropriate in this case, when it said at (J.A. 18-19):

> . . . when viewed as a whole, the record supports Hillebrand's claim that there was no genuine reduction in force that would trigger the more exacting standards of *Holley* in order to overcome a motion for summary judgment. The District Court's reliance upon *Holley*, therefore, was erroneous.
>
> We have previously held that the prima facie formula first articulated in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), is not exclusive and its application will vary in different fact situations. *Legrand v. Trustees of University of Ark.*, 821 F.2d 478, 480 (8th Cir. 1987) (Title VII); *Leichihman v. Pickwick Int'l*, 814 F.2d 1263, 1269 (8th Cir. 1987) (ADEA). The particular allegations and facts in a case will determine the appropriate legal framework at the prima facie stage. The significance of the prima facie showing is the inference it creates that the plaintiff was discharged for a discriminatory reason.

3. The Court of Appeals consistently applied well-established standards for summary judgment, and there is no justification for the argument by Petitioner that by its decision it created confusing precedent. Likewise, there is no justification or support for the claim by Petitioner that the decision of the Appeals Court is in conflict with decisions of this Court and other Circuits regarding the availability of summary judgment. In this regard, it is difficult to understand Petitioner's reference to *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, and *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), which are not employment discrimination cases, and involve standards for

summary judgment which are somewhat remote from standards applicable to this case.

CONCLUSION

The issues inherent in this case do not rise to the significance and importance of issues appropriate for consideration by this Court. The case at bar involves an ordinary age discrimination claim, and, as observed by the Court of Appeals, the record contains evidence of age discrimination which transcends a bare prima facie showing. Accordingly, Petition For Writ Of Certiorari should be summarily denied.

Respectfully submitted,

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Respondent,

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Dated this 16 day of March, 1988.